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IN THE COURT OF APPEALS OF INDIANA

ALBERT BOYD,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 03A05-0609-CR-506
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE BARTHOLOMEW CIRCUIT COURT
The Honorable Stephen R. Heimann, Judge
Cause No. 03C01-0602-MR-249

June 20, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

KIRSCH, Judge

Albert Boyd appeals his conviction for murder,[1] a felony. Boyd raises two issues which we restate as:

I. Whether the trial court erred in rejecting Boyd's tendered instruction on voluntary manslaughter.

II. Whether the trial court erred in admitting the victim's statement to police obtained during the investigation of a prior incident.

We affirm.

FACTS AND PROCEDURAL HISTORY

About nine o'clock on the morning of January 1, 2006, Boyd's friend Octavius Nolan and Boyd's neighbor, Brian Christian, were moving a couch when Boyd approached the two men and asked them to take him to the hospital. On the way to the hospital, the men asked Boyd about his injuries and his wife Ruth. Boyd told them that he had killed Ruth with a skillet. After leaving Boyd at the hospital, the two men returned to Boyd's home where they found Ruth's body on the kitchen floor. They called police. After a jury trial, Boyd was convicted of murder and sentenced to sixty-two years imprisonment. He now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. Voluntary Manslaughter Instruction

Because instructing a jury is left to the sound discretion of the trial court, we will reverse only if the court abuses that discretion. *Smith v. State*, 777 N.E.2d 32, 34 (Ind.Ct.App.2002), *trans. denied* (2003). In reviewing a trial court's decision to give or refuse a tendered instruction, we consider whether the instruction correctly states the law; whether there is evidence in the record to support the giving of the instruction; and

[1] *See* IC 35-42-1-1 and IC 35-42-1-3.

whether the substance of the tendered instruction is covered by other instructions that are given. *Id.*

Voluntary manslaughter is inherently included in a murder charge. *Clark v. State*, 834 N.E.2d 153, 158 (Ind. Ct. App. 2005). Killing in the sudden heat of passion is the element that distinguishes voluntary manslaughter from murder, but there must be sufficient provocation to induce such passion to render the defendant incapable of cool reflection. *Matheney v. State*, 583 N.E.2d 1202, 1205 (Ind. 1992), *cert. denied*, 504 U.S. 962, 112 S. Ct. 2320 (1992). Sudden heat is characterized as "anger, rage, resentment, or terror sufficient to obscure the reason of an ordinary person, preventing deliberation and premeditation, excluding malice, and rendering a person incapable of cool reflection." *Id.* (quoting *Dearman v. State*, 743 N.E.2d 757, 760 (Ind. 2001)). A trial court should instruct the jury on voluntary manslaughter if the evidence demonstrates a serious evidentiary dispute regarding the mitigating factor of sudden heat. *Id.*

Boyd argues that Ruth frequently taunted him and that it angered him. In fact, one of the men who took Boyd to the hospital stated that Boyd was angry with Ruth earlier in the evening. Boyd offers no evidence of anything more than a continuing argument. According to his statement to police, Ruth was yelling at him from the bedroom while he was getting something from the freezer for her. He concedes that he took the skillet from the stove and hit her on the head several times when she walked into the kitchen yelling at him. The autopsy report showed that Ruth suffered multiple injuries to her shoulder, neck, and head, as well as injuries to the area of her left kidney. The trial court did not abuse its discretion in determining that the evidence did not support Boyd's tendered

instruction on voluntary manslaughter. Evidence of anger alone does not support giving the instruction on voluntary manslaughter. *Id.* Additionally, words alone cannot constitute sufficient provocation to give rise to a finding of sudden heat warranting an instruction on voluntary manslaughter. *Id*.

II. Admissibility of Victim's Statement

Boyd also contends that the trial court erred in admitting Ruth's statement to police regarding an earlier battery because it was inadmissible hearsay and evidence of a prior bad act that was inadmissible under Ind. Evidence Rule 404(4). He further argues that the prejudicial effect of the statement outweighs its probative value making it inadmissible under Ind. Evid. Rule 403.

We do not reach the merits of Boyd's argument because the admission of Ruth's statement, if error, was harmless beyond a reasonable doubt. Prior to the admission of the statement, Columbus Police Officers Kapczynski and Imlay testified without objection about Boyd's arrest for the prior battery and the court records of that battery were admitted without objection. In addition, Boyd admitted the existence of the prior battery in his statement to Columbus Police Detective Stillinger and said that he had contacted his attorney to plead guilty to the battery.

Evidence that is cumulative of other properly admitted evidence, even if erroneously admitted, is harmless error. *See Vance v. State*, 860 N.E.2d 617, 619 (Ind. Ct. App. 2007).

Affirmed.

DARDEN, J., and FRIEDLANDER, J., concur.